

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
LEVEL 3 COMMUNICATIONS LLC)	
)	
Petition for Forbearance Under)	
47 U.S.C. §160(c) from Enforcement)	WC Docket No. 03-266
of 47 U.S.C. §251(g), Rule 51.701(b)(1))	
and Rule 69.5(b))	

COMMENTS OF GVNW CONSULTING, INC.

GVNW Consulting, Inc. (GVNW) respectfully submits its opposition to the petition that was filed on December 23, 2003 by Level 3 Communications LLC (Level 3). GVNW is a management consulting firm that represents small, rural incumbent local exchange carriers.

In its petition, Level 3 requests the Commission forbear from the above-referenced provisions of its rules to the extent that Level 3's Internet protocol traffic which originates or terminates on the public switched telephone network (PSTN) is subject to interstate and/or intrastate access charges. Level 3 characterizes its petition as complementary to the AT&T petition that is the subject of WC Docket No. 02-361 filed in October, 2002.

It is worth noting that at page 8 in its petition, Level 3 exempts the areas served by rural telephone companies that are currently exempt from Section 251(c) pursuant to Section 251(f)(1).

Notwithstanding this exemption, we are concerned about the precedential nature of the instant petition and accordingly file our opposition to the request made by Level 3.

LEVEL 3 CONTINUES TO ACCESS THE PSTN IN ORDER TO SERVE ITS CUSTOMERS

In its petition at pages 16-18, Level 3 admits that its service utilizes the PSTN. So what is the basis for Level 3 to seek an exemption from access charges? Level 3's petition seeks to confuse the issue by claiming that its use of the Internet and IP as a transmission medium warrants a different treatment. There is not a rational public policy reason to accede to such a request as Level 3 uses an ILEC's network in the same manner as any other interexchange carrier.

The importance of networks and their use in serving customers is highlighted in the Joint Separate Statement of Commissioner Jonathan S. Adelstein, G. Nanette Thompson, Regulatory Commission of Alaska, and Bob Rowe, Montana Public Service Commission in last Friday's Recommended Decision of the Federal-State Joint Board on Universal Service (FCC 04J-1, released February 27, 2004). In their statement, these three commissioners stated in part:

For at least seventy years, and both before and after 1996 when universal service principles were codified, universal service policies have supported the cost of networks in high cost areas. Customers are not served by individual lines, but by networks. Technology has not yet obviated the need for physical networks. Even the most exciting new technologies are deployed either in or over networks. Networks are efficient in themselves, and they create opportunities for innovation by network users of all kinds. That's what customers need and expect. (includes text of footnote 311 of FCC 04J-1).

CURRENT RULES CLASSIFY LEVEL 3'S TRAFFIC AS INTEREXCHANGE IN NATURE

The current definitions for telecommunications and telecommunications service are relevant in evaluating Level 3's request. Telecommunications is currently defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." A telecommunications service is "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

Level 3's offerings constitute an interexchange telecommunications service, albeit one using a different transmission medium. While creative in its approach, such a choice in transmission medium does not relieve Level 3 from paying for facilities of other carriers used in the offering of such a service. The current rules require that access charges be assessed to Level 3.

GRANTING WHAT WOULD AMOUNT TO A PIECEMEAL EXEMPTION WOULD BE INAPPROPRIATE

The Commission is poised to begin an in-depth review of intercarrier compensation issues. In simplest terms, Level 3 is asking the Commission to grant an exemption from access charges based on its choice of transmission medium prior to a thorough review of all the public policy issues surrounding intercarrier compensation. There is not support in the current Commission record for granting such a request.

CONCLUSION

With the exemption accorded rural carriers, we contend that Level 3 has recognized the public policy need for rural carriers to be equitably compensated for the use of their networks. However, Level 3's request for forbearance is an attempt to create an unlevel playing field where Level 3 has access to facilities of non-rural and non-exempt rural carriers, for which it would not be obligated to remit compensation. This is an unreasonable request, and accordingly the Commission should deny the petition.

Respectfully submitted,

/s [Submitted via FCC ECFS system]

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